

### REMARKS

Claims 1-37 are pending, with claims 1, 19, and 37 being independent. Claim 37 has been amended. Support for the amendments is found, for example, on page 4. No new matter has been introduced. Allowance of all claims is respectfully requested.

#### Rejection under 35 U.S.C. 101.

Claim 37 was rejected as representing non-statutory subject matter. Claim 37 has been amended and not recites, “[a] client with a computer readable medium structured and arranged to act as a content access system.” Withdrawal of this rejection is respectfully requested.

#### Rejection under 35 U.S.C. 103

Claims 1-37 are rejected under 35 U.S.C. 103 as being rendered obvious over U.S. Patent No. 7,133,368 to Zhang et al. (“Zhang”) in view of U.S. Patent No. 5,956,716 to Kenner et al. (“Kenner”). This rejection is traversed because none of the limitations describe or suggest all of the features of independent claim 1. In particular, Zhang fails to describe or suggest, “requesting, using the client application on the client, identical portions of the content from each of the content sources in the list of the content sources [and] determining, using the client application on the client and based on requesting the identical portions of the content, a performance metric describing an ability for the content source to support the client as measured by the client between each of the at least two of the content sources... .” Note that claim 1 requires the identical portion of the accessed content to be rendered.

Zhang describes generating a request from a peer for a list of peers. See, e.g., Col. 8, ll. 33-50. Zhang describes that the size of the list of peers may be regulated. See, e.g., Col. 8, ll. 53-67. Zhang indicates that the latency between the requesting node and a list in the peers is measured. See also Col. 9, ll. 1-9. Zhang also indicates that a “hop-by-hop” probing process may be used. See Col. 9, ll. 9-27.

However, the limitation in claim 1 represents a far different limitation that the above-referenced functionality in Zhang. Specifically, claim 1 requires that the client application on the

client request identical portions of the content from each of the content sources. Zhang simply does not describe or suggest requesting identical portions. Second, claim 1 requires rendering of the identical portion of the accessed content and a subsequent portion of content that follows the identical portion of the accessed content from the selected content source. Put differently, the identical portion of content is first used to determine a performance metric describing an ability for the content source to support the client as measured by the client between each of the at least two of the content sources and then rendered. Zhang simply fails to describe or suggest these features.

The Office Action also relies on Kenner (U.S. Patent No. 5,956,716) in addressing claim 1. See Office Action, page 5. However, it is unclear which limitations the Office Action are addressed by Kenner. The cited portion of Kenner describes how the server load is used to select a content source. See, e.g., page 5 (“a source of queried video data is unavailable, an alternate source is used to deliver the requested data. Kenner, column 16, line 62 - column 17, line 11. Priorities and latency are calculated for the various sources in column 25, lines 12-36. In any event, Kenner fails to describe or suggest the above-cited limitations. Accordingly, allowance of claim 1 and its dependent claims is respectfully requested. Independent claims 19 and 37 recite similar limitations and are believed to be allowable for similar reasons. Accordingly, allowance of independent claims 19 and 37 and their dependent claims is respectfully requested.

### Conclusion

It is believed that all of the pending issues have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this reply should be construed as intent to concede any issue with regard to any claim, except as specifically stated in this reply.

Applicant : Brown et al.  
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No fees are believed to be due. However, please apply any charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

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Date: \_\_\_\_\_

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